

AMENDED IN ASSEMBLY JUNE 26, 2013

SENATE BILL

No. 12

Introduced by Senator Corbett

December 3, 2012

An act to amend Section 1770 of the Civil Code, and to add Article 6 (commencing with Section 12098.10) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, relating to consumer affairs.

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Corbett. Consumer affairs.

Existing law makes unlawful certain acts identified as unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result, or ~~which~~ *that* results, in the sale or lease of goods to any consumer.

This bill would add to that list of acts an act representing a product as made in California, by using a specified Made in California label, unless the product complies with standards adopted by the Governor's Office of Business and Economic Development, to the extent those standards are adopted. The bill would establish the Made in California Program within the office, as provided, and would create the Made in California Fund as a special fund in the State Treasury, ~~which~~, *that*, upon an appropriation of those funds by the Legislature, would be available for that purpose. The bill would require the office to report to the Legislature on January 1, 2015, and annually thereafter, regarding expenditures and progress of the program. The bill would additionally authorize the office to receive monetary donations and other donations from businesses, nonprofit organizations, or the public, for

implementation of the program, as specified, and would authorize the office to charge an application fee for participation in the program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1770 of the Civil Code, as amended by
2 Section 1 of Chapter 653 of the Statutes of 2012, is amended to
3 read:
- 4 1770. (a) The following unfair methods of competition and
5 unfair or deceptive acts or practices undertaken by any person in
6 a transaction intended to result or which results in the sale or lease
7 of goods or services to any consumer are unlawful:
- 8 (1) Passing off goods or services as those of another.
9 (2) Misrepresenting the source, sponsorship, approval, or
10 certification of goods or services.
11 (3) Misrepresenting the affiliation, connection, or association
12 with, or certification by, another.
13 (4) Using deceptive representations or designations of
14 geographic origin in connection with goods or services.
15 (5) Representing that goods or services have sponsorship,
16 approval, characteristics, ingredients, uses, benefits, or quantities
17 which they do not have or that a person has a sponsorship,
18 approval, status, affiliation, or connection which he or she does
19 not have.
20 (6) Representing that goods are original or new if they have
21 deteriorated unreasonably or are altered, reconditioned, reclaimed,
22 used, or secondhand.
23 (7) Representing that goods or services are of a particular
24 standard, quality, or grade, or that goods are of a particular style
25 or model, if they are of another.
26 (8) Disparaging the goods, services, or business of another by
27 false or misleading representation of fact.
28 (9) Advertising goods or services with intent not to sell them
29 as advertised.
30 (10) Advertising goods or services with intent not to supply
31 reasonably expectable demand, unless the advertisement discloses
32 a limitation of quantity.

1 (11) Advertising furniture without clearly indicating that it is
2 unassembled if that is the case.

3 (12) Advertising the price of unassembled furniture without
4 clearly indicating the assembled price of that furniture if the same
5 furniture is available assembled from the seller.

6 (13) Making false or misleading statements of fact concerning
7 reasons for, existence of, or amounts of price reductions.

8 (14) Representing that a transaction confers or involves rights,
9 remedies, or obligations which it does not have or involve, or
10 which are prohibited by law.

11 (15) Representing that a part, replacement, or repair service is
12 needed when it is not.

13 (16) Representing that the subject of a transaction has been
14 supplied in accordance with a previous representation when it has
15 not.

16 (17) Representing that the consumer will receive a rebate,
17 discount, or other economic benefit, if the earning of the benefit
18 is contingent on an event to occur subsequent to the consummation
19 of the transaction.

20 (18) Misrepresenting the authority of a salesperson,
21 representative, or agent to negotiate the final terms of a transaction
22 with a consumer.

23 (19) Inserting an unconscionable provision in the contract.

24 (20) Advertising that a product is being offered at a specific
25 price plus a specific percentage of that price unless (A) the total
26 price is set forth in the advertisement, which may include, but is
27 not limited to, shelf tags, displays, and media advertising, in a size
28 larger than any other price in that advertisement, and (B) the
29 specific price plus a specific percentage of that price represents a
30 markup from the seller's costs or from the wholesale price of the
31 product. This subdivision shall not apply to in-store advertising
32 by businesses which are open only to members or cooperative
33 organizations organized pursuant to Division 3 (commencing with
34 Section 12000) of Title 1 of the Corporations Code where more
35 than 50 percent of purchases are made at the specific price set forth
36 in the advertisement.

37 (21) Selling or leasing goods in violation of Chapter 4
38 (commencing with Section 1797.8) of Title 1.7.

39 (22) (A) Disseminating an unsolicited prerecorded message by
40 telephone without an unrecorded, natural voice first informing the

1 person answering the telephone of the name of the caller or the
2 organization being represented, and either the address or the
3 telephone number of the caller, and without obtaining the consent
4 of that person to listen to the prerecorded message.

5 (B) This subdivision does not apply to a message disseminated
6 to a business associate, customer, or other person having an
7 established relationship with the person or organization making
8 the call, to a call for the purpose of collecting an existing
9 obligation, or to any call generated at the request of the recipient.

10 (23) The home solicitation, as defined in subdivision (h) of
11 Section 1761, of a consumer who is a senior citizen where a loan
12 is made encumbering the primary residence of that consumer for
13 the purposes of paying for home improvements and where the
14 transaction is part of a pattern or practice in violation of either
15 subsection (h) or (i) of Section 1639 of Title 15 of the United States
16 Code or paragraph (e) of Section 226.32 of Title 12 of the Code
17 of Federal Regulations.

18 A third party shall not be liable under this subdivision unless
19 (A) there was an agency relationship between the party who
20 engaged in home solicitation and the third party or (B) the third
21 party had actual knowledge of, or participated in, the unfair or
22 deceptive transaction. A third party who is a holder in due course
23 under a home solicitation transaction shall not be liable under this
24 subdivision.

25 (24) (A) Charging or receiving an unreasonable fee to prepare,
26 aid, or advise any prospective applicant, applicant, or recipient in
27 the procurement, maintenance, or securing of public social services.

28 (B) For purposes of this paragraph, the following definitions
29 shall apply:

30 (i) “Public social services” means those activities and functions
31 of state and local government administered or supervised by the
32 State Department of Health Care Services, the State Department
33 of Public Health, or the State Department of Social Services, and
34 involved in providing aid or services, or both, including health
35 care services, and medical assistance, to those persons who,
36 because of their economic circumstances or social condition, are
37 in need of that aid or those services and may benefit from them.

38 (ii) “Public social services” also includes activities and functions
39 administered or supervised by the United States Department of
40 Veterans Affairs or the California Department of Veterans Affairs

1 involved in providing aid or services, or both, to veterans, including
2 pension benefits.

3 (iii) “Unreasonable fee” means a fee that is exorbitant and
4 disproportionate to the services performed. Factors to be
5 considered, when appropriate, in determining the reasonableness
6 of a fee, are based on the circumstances existing at the time of the
7 service and shall include, but not be limited to, all of the following:

8 (I) The time and effort required.

9 (II) The novelty and difficulty of the services.

10 (III) The skill required to perform the services.

11 (IV) The nature and length of the professional relationship.

12 (V) The experience, reputation, and ability of the person
13 providing the services.

14 (C) This paragraph shall not apply to attorneys licensed to
15 practice law in California, who are subject to the California Rules
16 of Professional Conduct and to the mandatory fee arbitration
17 provisions of Article 13 (commencing with Section 6200) of
18 Chapter 4 of Division 3 of the Business and Professions Code,
19 when the fees charged or received are for providing representation
20 in administrative agency appeal proceedings or court proceedings
21 for purposes of procuring, maintaining, or securing public social
22 services on behalf of a person or group of persons.

23 (25) (A) Advertising or promoting any event, presentation,
24 seminar, workshop, or other public gathering regarding veterans’
25 benefits or entitlements that does not include the following
26 statement in the same type size and font as the term “veteran” or
27 any variation of that term:

28 (i) “I am not authorized to file an initial application for Veterans’
29 Aid and Attendance benefits on your behalf, or to represent you
30 before the Board of Veterans’ Appeals within the United States
31 Department of Veterans Affairs in any proceeding on any matter,
32 including an application for such benefits. It would be illegal for
33 me to accept a fee for preparing that application on your behalf.”
34 The requirements of this clause do not apply to a person licensed
35 to act as an agent or attorney in proceedings before the Agency of
36 Original Jurisdiction and the Board of Veterans’ Appeals within
37 the United States Department of Veterans Affairs when that person
38 is offering those services at the advertised event.

39 (ii) The statement in clause (i) shall also be disseminated, both
40 orally and in writing, at the beginning of any event, presentation,

1 seminar, workshop, or public gathering regarding veterans' benefits
2 or entitlements.

3 (B) Advertising or promoting any event, presentation, seminar,
4 workshop, or other public gathering regarding veterans' benefits
5 or entitlements which is not sponsored by, or affiliated with, the
6 United States Department of Veterans Affairs, the California
7 Department of Veterans Affairs, or any other congressionally
8 chartered or recognized organization of honorably discharged
9 members of the Armed Forces of the United States, or any of their
10 auxiliaries that does not include the following statement, in the
11 same type size and font as the term "veteran" or the variation of
12 that term:

13
14 "This event is not sponsored by, or affiliated with, the United
15 States Department of Veterans Affairs, the California Department
16 of Veterans Affairs, or any other congressionally chartered or
17 recognized organization of honorably discharged members of the
18 Armed Forces of the United States, or any of their auxiliaries.
19 None of the insurance products promoted at this sales event are
20 endorsed by those organizations, all of which offer free advice to
21 veterans about how to qualify and apply for benefits."

22
23 (i) The statement in this subparagraph shall be disseminated,
24 both orally and in writing, at the beginning of any event,
25 presentation, seminar, workshop, or public gathering regarding
26 veterans' benefits or entitlements.

27 (ii) The requirements of this subparagraph shall not apply in a
28 case where the United States Department of Veterans Affairs, the
29 California Department of Veterans Affairs, or other congressionally
30 chartered or recognized organization of honorably discharged
31 members of the Armed Forces of the United States, or any of their
32 auxiliaries have granted written permission to the advertiser or
33 promoter for the use of its name, symbol, or insignia to advertise
34 or promote the event, presentation, seminar, workshop, or other
35 public gathering.

36 (26) Representing that a product is made in California by using
37 a Made in California label created pursuant to subdivision (d) of
38 Section 12098.10 of the Government Code, unless the product
39 complies with standards adopted by the Governor's Office of
40 Business and Economic Development. This paragraph shall be

operative only if standards to that effect have been adopted pursuant to Section 12098.10 of the Government Code.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and which is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, “mortgage broker or lender” includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. Nothing in this paragraph shall have any effect on the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

SEC. 2. Article 6 (commencing with Section 12098.10) is added to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 6. The Made in California Program

12098.10. (a) The Made in California Program, a public and private collaboration, is hereby created within the Governor’s Office of Business and Economic Development. The purposes of the program are to encourage consumer product awareness and to foster purchases of high-quality products manufactured in this state.

(b) (1) The office may develop and adopt standards that permit a company to represent that a product is made in this state. Those standards may include any of the following:

~~(A) The company primarily designs and manufactures a physical product, rather than a digital product or service.~~

~~(B) The company manufactures one or more products in this state.~~

~~(C)~~

(A) The company has a California-based workforce ~~and has the desire to grow that workforce over time.~~

(B) *The product is entirely or substantially manufactured in the state.*

(2) For purposes of this section, “manufacture” means the process of taking raw materials or components and adding value to those materials and components in order to create a final, recognizable product. “Manufacture” does not include the process of completing a final assembly from subassemblies made elsewhere, or the act of packaging a product.

(c) The program and the standards shall not apply to those agricultural products subject to the Buy California Program described in Section 58750 of the Food and Agricultural Code.

(d) In accordance with the provisions of Chapter 1 (commencing with Section 58601) of Part 2 of Division 21 of the Food and Agricultural Code, the office may issue and make effective a marketing agreement, including, but not limited to, issuance of a Made in California label, and be advised by those California businesses willing to participate in the program on a voluntary basis via funding or in-kind contributions in a manner defined under the agreement.

(e) (1) As part of the Made in California Program, the office shall require each company to apply to the office for use of the Made in California label.

(2) The office may require a fee to accompany the application. The fee shall be determined by the office, and shall not exceed the reasonable costs to the office in providing the services for which it is charged. Proceeds from the fee shall be used to cover the costs of implementing the Made in California Program.

(3) The office may begin accepting applications prior to fully developing and implementing the Made in California Program.

1 (f) The office may accept monetary donations or other donations
2 from businesses, nonprofit organizations, or individuals for the
3 purpose of implementing the Made in California Program.

4 (g) (1) Notwithstanding Section 10231.5, the office shall report
5 to the Legislature on January 1, 2015, and each successive January
6 1, regarding its expenditures, progress, and ongoing priorities with
7 this program.

8 (2) The plan submitted to the Legislature pursuant to paragraph
9 (1) shall be submitted pursuant to Section 9795.

10 (h) The Made in California Fund is hereby created as a special
11 fund in the State Treasury consisting of the revenues contributed
12 pursuant to this section, and, upon an appropriation of those funds
13 by the Legislature, shall be available for purposes of this section.